IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

ST.Rev..No. 194 of 2007

(TA.712/2004 of SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH-II, ERNAKULAM)

REVISION PETITIONER/APPELLANT/ASSESSEE

A.P.ISMAIL, ANWAR TRADERS,
NELLIKUZHY.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
ADV. SRI.K.M.FIROZ

RESPONDENT/ RESPONDENT/REVENUE

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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SALES TAX REVISION . No. 194 OF 2007

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Dated this the 31st July, 2007

O R D E R

H.L. Dattu, C.J.:

Assessee is the revision petitioner before this court. Assessee is a registered dealer both under the provisions of the K.G.S.T. Act and Central Sales Tax Act. He is a dealer in refined oil.

2. The assessing authority, for the assessment year 1992-93, had completed the assessment on 11.04.1996. Aggrieved by the said order of assessment passed by the assessing authority, the assessee had carried the matter by way of first appeal. The first appellate authority, after setting aside the orders of assessment, had remanded the matter to the assessing authority to redo the matter in accordance with law. After such remand, the assessing authority had passed the best judgment assessment. Aggrieved by the said fresh assessment orders passed by the assessing authority, the assessee had filed an appeal before the first appellate authority. The appellate authority was of the view that the addition of two times of sales turnover estimated out of the checkpost declarations, made by the assessing authority is unwarranted and therefore, had directed the assessing authority to limit the addition of sales turnover to the actual sales estimated, depending on the checkpost declarations. Apart from this, the appellate authority had not granted any other reliefs to the assessee. The assessee, being aggrieved by the aforesaid orders passed by the first appellate authority had carried the

matter by way of second appeal before the Sales Tax Appellate Tribunal. The Tribunal by its order in T.A.No.712 of 2004 dated 30th September 2005 has rejected the appeal and has confirmed the orders passed by the first appellate authority. Aggrieved by the said order passed by the Tribunal, the assessee is before us in this Revision filed under section 41 (1) of the Kerala General Sales Tax Act 1963 (hereinafter referred to as 'Act').

2. Dr. K.B. Mohamedkutty, learned counsel appearing for the revision petitioner, at the time of hearing, would contend that the additions made by the assessing authority relates to the transactions done by other dealers using the revision petitioner's name; the consignors could not be examined even though summons were issued ; the assessing authority ought to have exercised his statutory powers against the persons who defied the summons issued by the assessing authority and lastly, the assessing authority has taken into consideration the irrelevant facts to sustain the orders passed by the first appellate authority. No other contention was canvassed by the learned counsel. In our opinion, the contentions raised by the learned counsel has no merit whatsoever.

3. In the instant case, the assessing authority, after rejecting the books of accounts produced by the assessee at the time of assessment for the year 1992-93 had relied upon the checkpost declarations filed by the consignors and thereafter had proceeded to pass the best judgment assessment. While doing so, he had made addition of two times of the sales

turnover declared by the assessee. This order of the assessing authority was modified by the first appellate authority and the same has been confirmed by the Tribunal.

4. In the instant case, as we have already noticed, the assessing authority, relying upon the checkpost declarations, had proceeded to pass the best judgment assessment. The exception that is taken by the assessee to such procedure adopted by the assessing authority is that the assessing authority should have summoned the consignors who are dealers under the provisions of the Andhra Pradesh General Sales Tax Act. In fact, in the present case, though the assessing authority had made its effort to examine the dealers under the provisions of the Andhra Pradesh General Sales Tax Act, they refused to appear before him on the ground that they are registered dealers under the provisions of the Andhra Pradesh General Sales Tax Act. In the instant case, it is the case of the assessee that he has effected interstate sales by way of consignments. Under section 12 of the Act, the burden of proof is on him. The assessee has not discharged that burden.

5. Therefore, keeping in view the stand taken by the assessing authority as well as the first appellate authority, the Tribunal has confirmed the orders passed by the first appellate authority. In our opinion, the orders passed by the Tribunal is purely based on the facts and therefore this Sales Tax Revision filed by the assessee/petitioner cannot be entertained by us for the simple reason that a petition filed under section 41(1) of the Act can be

entertained only when the Tribunal erroneously decides the questions of law or fails to consider the questions of law. In the instant case, those ingredients are not available. Therefore we do not intend to entertain this Sales Tax Revision. Accordingly, the Sales Tax Revision requires to be rejected and it is rejected at the preliminary stage itself.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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